

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 5 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF WEALTH-TAX, Gujarat II

Versus

SHMATILAL POPATLAL (HUF)

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Appearance:

Mr. M.J. THAKORE, instructed by MR MANISH R BHATT for Petitioner  
SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 06/12/96

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The following question has been referred for our opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench "A", under Section 27 of the Wealth Tax Act, 1957:-

"Whether, on the facts and in the circumstances

of the case, the Income Tax Appellate Tribunal has been right in law in setting aside the order of the Commissioner of Wealth Tax made under Section 25(2) of the Wealth Tax Act, 1957?"

The relevant assessment years are 1974-75 to 1977-78. The assessee owned a bungalow with an open area of land in the Shahibaug locality of the city of Ahmedabad. The said asset was valued at Rs. 1,43,375/for the assessment year 1974-75, as per the report of a registered valuer, who had estimated the value at Rs. 35 per square yard and since the land was encumbered with a building, the effective value thereof was taken at 60% of the said value of the land. The Wealth Tax Officer accepted the valuation return and completed the assessment for the assessment year 1974-75. On the same basis, he completed the assessment for the assessment years 1975-76, 1976-77 and 1977-78.

The Commissioner of Wealth Tax, Gujarat II, Ahmedabad invoking his revisional powers under Section 25(2) of the said Act, held that the assessment orders passed by the Wealth Tax Officer under Section 16(1) of the Act were erroneous and prejudicial to the interest of the Revenue. He held that the land on which the bungalow was constructed had an area of 4,471 sq.yards and the constructed area was only 371 sq.yards. It was therefore, noticed that there was surplus land available for development. The Commissioner therefore held that the registered valuer was not justified in treating the entire plot of land at reduced value on the plea that the land was encumbered with a building thereon. He was of the view that prima-facie the estimate of market price of the property made by the registered valuer was less than its fair market value and that the Wealth Tax Officer should therefore, have referred the valuation of the said asset to the Valuation Officer under Section 16A(1)(a) of the said Act. The Commissioner further held that the value of the bungalow constructed on the building was estimated at Rs. 49,484/- only and there being a surplus open plot of land which could be developed, such surplus land cannot be considered for the purpose of exemption under Section 5(1)(iv) of the said Act. The Commissioner referred to the Board's circular in context of the land appurtenant to the house, which laid down the guidelines for valuation of the land which was not appurtenant to the house. As per this circular, where the vacant land surrounding a house does not exceed the minimum land required to be left open according to Municipal bye-laws in force in the area no portion of the vacant land can be regarded as not being a part of the house itself or

appurtenant to the house and where the open land exceeds the limit specified in the Municipal bye-laws, but if a separate tenentable unit cannot be constructed thereon even such land was to be considered as a part of the house appurtenant thereto. However, in cases where a separate tenentable unit could be constructed on such excess land, such land can be considered as not appurtenant to the house and the matter regarding its valuation may be referred to the Valuation Cell. The Commissioner observed that in view of the clear instructions of the Board such surplus land was to be considered as not appurtenant to the house and the matter regarding its valuation was required to be referred to the Valuation Cell. Having not done so, the order of the Wealth Tax Officer was considered to be erroneous and prejudicial to the interest of the Revenue. The assessment orders were therefore, set aside with a direction that the WTO should refer the question of valuation of the said asset to the Valuation Cell.

The Tribunal, entertaining the appeal against the orders of the Wealth Tax Commissioner, observed that the fact that the record has indicated certain guidelines for the valuation of the land appurtenant to the house does not by itself indicate that valuation adopted by the assessee supported by registered valuer's report was erroneous. It was observed that neither the circular nor general principles of valuation referred to by the Commissioner make the method adopted by the registered valuer prima-facie defective. It was further observed that the position would have been different if the Commissioner had information with him to indicate the actual operation of the principle of land appurtenant to a house in the areas where the land was situated and on that basis he had treated the value adopted by the WTO as erroneous. The Tribunal therefore, not finding justification for supporting the Commissioner's orders set them aside. The Tribunal observed that in view of this finding of the Tribunal it did not find it necessary to go into the question as to whether the Commissioner in exercise of his powers under Section 25(2) of the said Act can substitute the opinion of the Wealth Tax Officer under Section 16A(1) of the said Act, especially when the said provision gives discretion to the WTO in respect of making of a reference to Valuation Officer. The Tribunal however, observed that it was not quite sure whether the guidelines given for valuation of the land in the Board's circular could be accepted as correct.

Section 25(2) of the Act empowers the Commissioner to call for and examine the record of any

proceeding under the Act and on such examination if he considers that any order passed therein by the assessing officer is erroneous in so far as it is prejudicial to the interests of Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment. It will be noticed that the revisional powers of the Commissioner under the said provision are of a wide amplitude and they enable the Commissioner to make any order as the circumstances of the case justify including modification of the assessment or cancellation of the assessment order and to direct a fresh assessment. The Commissioner referred to certain guidelines given by the Board which had a direct bearing on the exercise of powers by the assessing officer in considering the valuation of an asset. The area of land was 4,471 sq.yards with the built up area of only 371 sq.yards thereon. Therefore, the question whether the house would include the entire area of 4471 sq.yards surrounding that house and owned by the assessee or whether it should be construed as to include only the appurtenant land surrounding the house which was required under the law to be left open or could be considered to be as a part of the house or a dwelling unit, was required to be gone into by the Wealth Tax Officer. Even apart from the circular of the Board this was a vital question which was required to be examined while considering the value of the asset. The question whether a large portion of land can be separately developed without affecting the owner's right to retain the house would have bearing on the question of the value of the asset. Therefore, when the Commissioner noted that the relevant aspects were not gone into by the Wealth Tax Officer and he set aside the order of the Wealth Tax Officer directing him to refer the question of valuation to the Valuation Officer, it can never be said that the Commissioner had committed any error in exercise of his powers which could have warranted interference by the Tribunal. The Commissioner, in our opinion, was perfectly justified in giving a direction to the Wealth Tax Officer to refer the question of valuation to the Valuation Cell and to consider the question of assessment afresh in respect of the said asset. In fact, the observations of the Tribunal that "The position would have been different if the Commissioner had information with him to indicate the actual operation of these principles in areas where this land is situated and on that basis treated the value adopted by the WTO as erroneous" are clearly indicative

of the fact that if relevant material was before the Commissioner about the applicability of the principle or the circular on which the Commissioner relied on, the order of the Commissioner was right. We find from the record that the Commissioner has referred to the total land and the ratio of the constructed portion over it. Whether on the general principles or on the basis of the circular, existence of which has not been disputed, the conclusion of the Tribunal that Commissioner had no relevant material before him is not well founded. This alone is sufficient to vitiate the findings of the Tribunal.

We are therefore of the view that the Tribunal was not right in law in setting aside the Commissioner's orders. The question referred to us is therefore, answered in the negative in favour of the Revenue. Reference stands disposed of accordingly with no order as to costs.

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